
(2002) 07 PAT CK 0052

In the Patna High Court

Case No : Second Appeal No. 278 of 1999

Chandradip Rai and Others

APPELLANT

Vs

Md. Tahir Ansari and Others

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0052

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—This appeal by the plaintiffs is against the judgment of reversal passed in Title Appeal No. 42 of 1994 by 2nd Additional District Judge, Vaishali at Hajipur, setting aside the judgment passed by Subordinate Judge III, Vaishali at Hajipur in T.S. No. 198 of 1982.

2. Briefly stated the case of the plaintiff-appellants is that plaintiff Nos. 2 & 3 are sons of plaintiff No. 1 and all the plaintiffs constitute a joint Hindu Mitakshra family of , which plaintiff No. 1 is Karta. Defendant No. 1 sold 5 dhurs of land of his own share to the plaintiffs mentioned in Scheduled-I & II of the plaint vide two sale deeds (Exhibits-6 & 6/A) one in the name of plaintiff No. 2 for 2 1/2 dhurs and the other in the name of plaintiff No. 3 for another 2 1/2 dhurs for a consideration of Rs. 15,000/- each. After adjustment and advance made to defendant No 1 a sum of Rs. 5,000/- was only left of be paid to him with the agreement that plaintiffs would pay the same at the time of exchange of equivalence, for which no definite date and time was fixed. Defendant No. 1 received Rs. 1800/- from plaintiff No. 1 on 26.9.1982, and, thus, Rs. 3200/- only was left to be paid to defendant No. 1 as consideration money, of the said kewala. Before this payment on 23.8.1982 plaintiff No. 1 paid Rs. 5,000/- to defendant No. 1 which was the amount due regarding the other sale deed taken in the name of plaintiff No. 3 and defendant No 1 gave the registration receipt of the said sale deed after making necessary endorsement on the back of the receipt. So far the registration receipt of another sale deed in the name of plaintiff No. 2 is concerned, defendant No. 1 stated that the said receipt is not

with him and it was agreed that defendant No. 1 would take the balance amount from plaintiff No. 1 after he would trace out the registration receipt to be handed over to the plaintiffs. Thereafter, on various occasions plaintiff No. 1 tendered the balance amount to defendant No. 1 with a request to hand over the registration receipt, but he evaded on one pretext or the other. Ultimately, plaintiffs served notice to defendant No. 1 on 8.10.1982 personally, who remained silent on the said point and canceled both the sale deeds through two cancellation deeds dated 13.10.1982 after five days of the receipt of the said notice without any information to the plaintiffs. Hence, the plaintiffs filed suit for declaration of their title to suit lands mentioned in Scheduled I & II and for fixing a particular date to deposit in Court the balance amount of Rs. 3200/-, which is unpaid consideration of a sale deed of land mentioned in Schedule-I of the plaint, and defendant No. 1 be directed to withdraw the aforesaid amount and deposit in Court the original sale deed, failing which the certified copy of the said sale deed be treated and declared as original and possession thereof be delivered to the plaintiffs through the process of the Court.

3. Defendant No. 1 in his written statement has stated that plaintiff No. 1 settled to purchase 5 dhurs of land for Rs. 30,000/- from defendant No. 1 on 30.7.1982. Defendant No. 1 had to pay Rs. 10,000/- Ramashish Singh and Rs. 5,000/- to Md. Ansari as they were mortgagees of the said land. It was also settled that the land under conditional sale deed dated 8.10.1980 for Rs. 13,500/- in favour of plaintiff No. 2 and Rajeshwar Singh would be discharged in favour of defendant No. 1 and thereafter, he would get Rs. 1500/- from plaintiffs. The plaintiffs in collusion with his scribes managed two sale deeds scribed in favour of plaintiff Nos. 2 & 3 and the same were executed on 17.8.1982, the contents thereof were never read out to defendant No. 1. The plaintiffs did not pay the consideration amount and the conditional sale deed was also not discharged. Later, defendant No. 1 could know that the plaintiffs got two sale deeds executed by him with respect to western block of 5 dhurs while the same belonged to Tauhid Ansari and the plaintiffs never settled to purchase the same. Thus, after getting knowledge of the forgery committed by the plaintiffs, defendant No. 1 executed cancellation deed dated 13.10.1982. He denied the payments and notice by the plaintiffs, and claimed that 5 dhurs of land allotted to him was sole by him to defendant 2nd party though sale deed dated 16.2.1983 and possession was delivered to them.

4. Defendant Nos. 2 to 7 have filed separate written statement and supported the case of the defendant No. 1.

5. The trial Court on consideration of the pleadings as well as evidence both oral and documentary adduced on behalf of the parties declared that the plaintiffs have acquired valid right and interest in the suit land on the basis of their sale deeds (Exhibits-6 & 6/A) and directed the plaintiffs to deposit in Court the balance amount of Rs. 3200/- of Exhibit-6/A and defendant No. 1 was directed to withdraw the said amount and to deposit in Court the original sale deed, failing

which the certified copy of the said sale deed will be treated and declared as original sale deed. The lower appellate Court on appeal reverse the findings of the trial Court by holding that the plaintiff has no title over Scheduled I & II property, hence, the present appeal by the plaintiffs.

6. It is submitted by the learned Counsel appearing for the appellants that the lower appellate Court has to assigned any reasons while discarding the evidence of P.Ws. He further submitted that the lower appellate Court has failed to appreciate that contesting defendant No. 2 himself has admitted the share of defendant No. 1 over five dhurs of land sold to the plaintiffs through two sale deeds (Exhibits-6 & 6/A).

7. The lower appellate Court in paragraph 11 of its judgment after considering the oral as well as documentary evidence found that by Exhibit-6 the land conveyed by Tahir is admittedly of the share of Tauhid, so, the plaintiffs cannot get any title over it as defendant No. 1 Tahir after partition had no title or possession to the same, so, payment or no payment of Exhibit-6 is of no avail. The lower appellate Court has specifically held that the property did not belong to the defendant No. 1 and so the plaintiffs have no title over the land covered by Exhibit-6. As regards, lands covered by Exhibit-6/A, the lower appellate Court found that the averment of paint mentioned in paragraph 31 shows that it is part of western 5 dhurs of land, which fell in the share of Tohid, defendant No. 3 and by such sale deed the plaintiffs do not acquire title to the land covered by Exhibit-6/A. The case of the plaintiffs is falsified by evidence of D.Ws. written statements of defendants and averments of paint mentioned in paragraph 6 of the plaint. Learned Counsel for the plaintiff-appellants has failed to show any infirmity in the findings recorded by the lower appellate Court, thus, in my opinion, the judgment of the lower appellate Court does not warrant any interference in Second Appeal.

8. Learned Counsel for the appellants in support of his contention placed reliance upon the decision of this Court in the case of Shiva Narayan Sah and Others Vs. Baidya Nath Prasad Tiwary and Others, and Harbans Singh Vs. Smt. Tekamani Devi and Others, and upon the decision of the Apex Court in the case of Vidhyadhar v. Mankikrao and Anr. reported in 1999 SAR (Civil) 442. I failed to understand as to how the aforementioned decisions are of any help to the appellants. The decisions relied upon by the appellants are with respect to validity of payment only of part of consideration money which would not render sale transaction invalid on account of the provisions contained in Section 54 of the Transfer of Property Act, 1882, which is not relevant in the present case in view of the clear findings of the lower appellate Court, who found that by Exhibit-6 the land conveyed by Tahir is admittedly of the share of Tohid and the plaintiffs cannot get any title over it as defendant No. 1 Tahir after partition had no title or possession to the same. Hence, the part payment or no payment of Exhibit-6 is of no avail. The lands covered by Exhibit-6/A has been found part of western 5 dhurs of land, which fell in the share of Tohid, defendant. No. 8 and by

such sale deed the plaintiffs do not acquire title.

9. As the matter stands concluded by the findings of facts by the lower appellate Court based on evidence this Court does not find any reason to interfere with the impugned judgment, moreso, when no substantial question of law is involved. The appeal is, thus, dismissed summarily.